

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH GREGORY DUNBAR,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:18-cv-1355

DAVID HUYGE, et al.,

Defendants.

REPORT AND RECOMMENDATION

The Court has before it Plaintiff's emergency motion for transfer to a federal prison or correctional facility (ECF No. 125), which I construe as a motion for injunctive relief. Pursuant to 28 U.S.C. § 636(b)(1)(B), I recommend that Plaintiff's motion be **DENIED**.

This is Plaintiff's third request in this case to be transferred to a federal prison. On March 27, 2019, Magistrate Judge Carmody issued a Report and Recommendation recommending that Plaintiff's requests for a temporary restraining order and preliminary injunction and for transfer to a federal facility be denied. (ECF No. 11.) The Court adopted that recommendation on April 23, 2019. (ECF No. 16.) On May 18, 2020, I issued a Report and Recommendation recommending that the Court deny Plaintiff's motion for injunctive relief and for an evidentiary hearing, in which Plaintiff again requested to be transferred to a federal prison. (ECF No. 112.)

In his instant motion, Plaintiff states that: (1) he has been transferred back to Lakeland Correctional Facility, where there is no six-foot social distancing or other COVID-19 preventative measure in place; (2) he is being denied envelopes by his prison counselor, resulting in denial of

Plaintiff's access to the courts; (3) he has been placed on modified grievance restriction; and (4) he is being refused medically prescribed shoes. (ECF No. 125 at PageID.886–88.)

As explained in *Dunbar v. Caruso*, No. 11-10123, 2012 WL 3308407 (E.D. Mich. Aug. 13, 2012), federal courts have no authority to transfer a state prisoner to a federal prison facility. *Id.* at *1 (noting that “nothing in [18 U.S.C. § 5003] or [*Howe v. Smith*, 452 U.S. 473 (1981)] grants a federal court authority to compel state prison officials to house a state prisoner in a federal prison”). I find the Eastern District of Michigan's analysis in *Dunbar* persuasive. Plaintiff offers no authority to the contrary. Thus, even if Plaintiff could satisfy the preliminary injunction factors—which he has not—the Court could not grant the requested relief.

Conclusion

For the reasons set forth above, I recommend that the Court **deny** Plaintiff's Motion for Transfer to a Federal Prison or Correctional Facility. (ECF No. 125.)

NOTICE

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Dated: August 27, 2020

/s/ Sally J. Berens
SALLY J. BERENS
U.S. Magistrate Judge